



## Whitley County Consolidated Schools

Dr. Patricia O'Connor  
*Superintendent*

Friday, June 29, 2018

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

### Appeal of a USAC Funding Decision

CC Docket No 02-6 – In the Matter of Schools and Libraries Universal Service Support Mechanism

Billed Entity Name:	Whitley County Consolidated Schools
Billed Entity Number:	130416
471 Number:	171024922
FRNs:	1799052723

Dear Ms. Dortch:

We are appealing to the FCC a recent denial of a requested service delivery date correction and the requisite funding commitment correction made by USAC staff for a FY-2017-2018 FRN.

#### TEXT OF DECISION WE ARE APPEALING:

"Your appeal has been denied - During Program Integrity Assurance (PIA) review, the Contract Expiration Date (CED) for FRN 1799052723 was modified from 6/30/2018 to 9/30/2017, which reduced the funding commitment. The Funding Commitment Decision Letter was issued on 7/8/2017. Federal Communications Commission (FCC) rules require appeals to be filed within 60 days of the date on the decision letter being appealed. No appeal of this decision letter was received. On your FCC Form 500, you requested that the CED be modified to 11/30/2017, which would increase the funding

commitment. New funding requests cannot be submitted through the FCC Form 500 process."

## BACKGROUND

The Whitley County Consolidated Schools (Whitley) posted an FCC Form 470 for FY 2017-2018 requesting bids for leased lit fiber circuits to provide WAN services to their buildings. Up to this point Whitley had been leasing these circuits through the State Master Contract (SMC) with ENA Services. As a result of their competitive bidding process, Whitley entered into a contract with WANRack for these circuits. Funding for this service was applied for under FCC Form 171003363, under FRN 1799005467. Knowing that initiation of any new service can be delayed, Whitley also filed for funding for the existing service under the SMC in FRN 1799052723 to be used as a transition service. It was never the intent to have duplicative service, but because this service is a vital part of Whitley's educational environment and this funding is a vital part of Whitley's budget it was important to ensure adequate funding was available for whichever service was in use. The circuits covered by these FRNs are a backbone of the educational opportunities in Whitley's buildings and securing adequate funding for them allows Whitley to dedicate as much local funding to the education of our students, creating the greatest possible public benefit within our district.

At the time the new contract was signed, it was clear that WANRack would need to do extensive preparatory work in order to provide these circuits. They began work as soon as the contract was signed. Unfortunately, some circuits run across railroad rights of way and required permits to move forward. RR permitting is always a time-consuming process and for this project was delayed longer than had been expected. Due to these delays, the new circuits were not available for Whitley's use until December 1, 2017.

## DISCUSSION

Transition Service is a term used in the E-Rate program when it is clear that the intent is to use the service provider that was found to be most cost effective through the competitive process, but that physical conditions will not allow for a complete and immediate switch, requiring a transition period with the previous provider. In June of 2017 both FCC Form 471s entered PIA review and the two FRNs were reviewed to ensure that they were not duplicative. In order to address the overlap of funding, PIA requested cutover dates from the FRN for the existing service to the FRN for the new service. Unfortunately, in June of 2017 there was no firm cutover date because WANRack was still experiencing extensive railroad permitting delays. To satisfy PIA,

an estimate was made that the new service would be in place by the first of October (see the answers to question II on "PIA cut over date reply" attached as part of the "Form 500 – 79473"). Based on this estimate, FRN 1799052723 received a funding commitment of \$78,840 on July 8, 2017.

This is a key point. The text of the Revised Funding Commitment Decision Letter (RFCDL issued 6/23/2018)) that we are appealing states "During Program Integrity Assurance (PIA) review, the Contract Expiration Date (CED) for FRN 1799052723 was modified from 6/30/2018 to 9/30/2017, which reduced the funding commitment." This is not true. Attached is the Funding Commitment Decision Letter from July 8, 2017. Cell U2 clearly shows a committed amount of \$78,840. The text from the RFCDL goes on to state "The Funding Commitment Decision Letter was issued on 7/8/2017. Federal Communications Commission (FCC) rules require appeals to be filed within 60 days of the date on the decision letter being appealed." There was no reason to appeal the 7/8/2017 FCDL because that document provided sufficient funding for this FRN. And then the text of the RFCDL states "On your FCC Form 500, you requested that the CED be modified to 11/30/2017, which would increase the funding commitment." Again, this is not true. At the time we filed Form 500 #79473 the funding committed in the FRN was more than sufficient to cover the two additional months requested.

Permitting issues continued and service was not cutover until December 1, 2017. We believed that because there was sufficient funding in the FRN to cover the two additional months that the only barrier to invoicing for those two months would be the FRN's contract end date (CED) that was at that time set to 9/30/2017. And so once the firm cut over date was established, Whitley filed FCC Form 500 #79473 (filed October 24, 2017) to correct the CED for FRN 1799052723 to 11/30/2017. At the time this Form 500 was filed the funding commitment for this FRN was \$78,840. This was verified by the FRN Status Tool on October 24, 2017 (see "DRT Oct 24 2017 cell T4 attached as part of the "Form 500 – 79473"). Funding necessary to cover this service for the period of 7/1/2017 to 11/30/2017 was projected to be \$32,850. At the time the Form 500 was filed there was sufficient funding in this FRN to cover the two additional months.

On January 16, 2018 a RFCDL was received through EPC informing Whitley that USAC had identified an issue regarding the funding for two FRNs and the funding for them had been reduced to match the number of months under contract. For FRN 1799052723, the contract term listed was July 1, 2017 – 9/30/2017. Because we had already filed a Form 500 to correct that CED, we anticipated that the funding would be corrected when the Form 500 was processed. We did not appeal this RFCDL because we believed that

an appeal would be redundant to the Form 500 already in the system and would slow the processing of the Form 500. At this time Form 500 #79473 had been in EPC for almost three months and there was no desire to do anything that would lengthen the processing of this form. We believed that the Form 500 would be processed based on the facts in place at the time the Form 500 was submitted.

Unfortunately, the Form 500 was denied (RFCDL issued 2/26/2018) based on the claim that there were insufficient funds in the FRN to cover the two additional months requested – a situation that USAC created.

We filed an appeal of the February RFCDL (appeal #90779, submitted to EPC 3/1/2018) believing that because that form was initiated by us, we had more grounds to appeal that decision.

Appeal #90779 was denied by RFCDL on June 23, 2018.

The funding commitment for FRN 1799052723 currently stands at \$19,710. The funding for the two additional months of service would be \$13,140. Without this funding from the E-Rate Program Whitley will have to modify their budget in order to pay the full cost of that WAN service for those two months. The most likely casualties of this budget change will be planned software and equipment purchases. These purchases are directly tied to instruction and if delayed will have a negative impact on teaching and learning. Areas that may be impacted if this funding is not approved include:

1. Replacing 65 of the student devices, or
2. Replacing 26 classroom projectors, or
3. Replacing 15 teacher laptops, or
4. Not purchasing monitoring software for 3,500 student devices.

Whitley replaces a number of devices (computers and projectors) each year as part of a regular replacement cycle. These purchases are budgeted annually in order to ensure that dated technology equipment is not a barrier to the teaching and learning process. The devices scheduled for replacement are nearing end of life and consequently need to be replaced. Without the requested funds, Whitley will be forced to reallocate money budgeted for technology replacement to pay for WAN services. As a result, Whitley will be forced to nurse this technology along for another year. This will also put them behind schedule resulting in a domino effect to the annual technology replacement rotation schedule. This leaves the District open to a higher rate

of failure for these devices, a frustrating experience for students and teachers and additional stress on the already stretched technology department. The monitoring/classroom management software is used by teachers on a daily basis. This software enables teachers to monitor student activity in a 1:1 learning environment. Without this capability, it is impossible to monitor students while they are working on their devices and extremely difficult to ensure that students are on task. For the reasons stated above it is clear that failure to replace aging technology and/or not providing teachers with the monitoring and management capabilities necessary for a 21<sup>st</sup> century classroom are not in the public interest.

### REQUESTED ACTION

We have demonstrated that there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements in our request that the contract expiration date be extended for FRN 1799052723. We have demonstrated that an FRN for a transition service was necessary to provide a vital service to Whitley's buildings while issues beyond the control of the new service provider delayed the start of their contracted service. We have demonstrated that we followed what we believed to be the most logical chain of action to correct the service dates and funding commitment for this FRN, but that actions taken by USAC without our knowledge created a situation where USAC was then unable to grant our request. Because Whitley had no way to know:

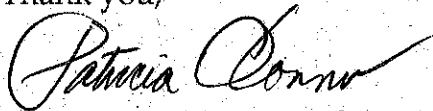
1. that RR permitting delays would extend well beyond those expected and;
2. that USAC would take action in EPC to remove committed funding,  
we are now forced to bring our request that:
  1. the contract expiration date be corrected to match the actual date that the service ended and;
  2. that funding for the two additional months be returned to the FRN by the FCC.

If the Commission believes that Whitley did not follow the most logical chain of action in appealing the denial of the Form 500, but should, instead have appealed the January RFCDL where USAC changed the funding commitment, we respectfully ask that the Commission grant a waiver of the deadline to do that and forward that waiver and this submission back to USAC as our appeal of that RFCDL. The Commission may grant a waiver for good cause shown and if it is in the public interest. We believe we have demonstrated good cause and that approval of the funding for the leased lit fiber services used by this countywide school district to support their students is in the public interest. We also request any other procedural waivers necessary for Whitley to

receive this funding, including but not limited to, an invoice deadline waiver for this FRN.

Thank you for your time and consideration. You are hereby authorized to contact our E-Rate Contact, Darsey Carnal, at 317-581-0169 or [darsey@adtecerate.com](mailto:darsey@adtecerate.com) if there is any additional information necessary for your review of our appeal of the contract expiration date extension denial and funding reduction for FRN 1799052723.

Thank you,



Dr. Patricia O'Connor, Superintendent  
Whitley County Consolidated Schools

Attached:

Original FCDL

Form 500 – 79473 (pages 1-6 of PDF) with supporting documents including:

PIA cut over date reply (pages 7 – 8 of PDF)

DRT Oct 24 2017(pages 9 – 11 of PDF)

February RFCDL denying the modification of the CED (pages 13 – 16 of PDF)

Post Commit Request - 74321

Appeal 90779 – appeal of Form 500 denial (pages 1-4 of PDF) with:

RFCLD denying this appeal (pages 5 – 9 of PDF)